Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 12, Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

ANSWER AND CROSS-BILL.

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Tucker Printing House, Jackson, Miss.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 12, Original.

STATE OF LOUISIANA v. STATE OF MISSISSIPPI.	Answer and Cross-Bill.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of Mississippi, one of the United States of America, by Andrew H. Longino, Governor, and William Williams, Attorney General, by leave of this Honorable Court, to the bill of complaint exhibited against said State of Mississippi by the Honorable William W. Heard, Governor, upon the information of Hon. Walter Guion, Attorney General, for and on behalf of the State of Louisiana, also one of the United States of America.

This defendant now and at all times hereafter saving to herself all, and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for her to make answer to, answering says:

I.

To the first paragraph of said bill defendant says that she admits that the State of Louisiana was admitted into the Union by virtue of Chapter 50 of the United States Statues at Large as stated in the Bill of Complaint.

II.

Answering the second paragraph defendant denies that according to the description given in the Act of Congress aforesaid that the said Act meant that it was necessary to reach the Gulf of Mexico through the Rigolets into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, and to follow said channel, north of Half Moon Island, through the Mississippi Sound to the north of Isle a Pitre through the Cat Island Channel Southwest of Cat Island into the Gulf of Mexico, or that it was intended by said Act that the line above referred to should constitute the eastern boundary line of the State of Louisiana; and defendant denies the correctness of Diagram No. 1, filed as a part of the bill of complaint, but on the contrary thereof defendant alleges that the true intent and purport of said Act of Congress admitting the State of Louisiana into the Union as to the above mentioned line, was and is as stated in the Cross-bill herewith filed.

III.

Answering the third paragraph of said bill of complaint defendant admits that certain territory was added to the State of Louisiana as therein stated.

IV.

Answering the fourth paragraph of the bill of complaint, this defendant denies that the legislation therein referred to had the effect claimed in said paragraph of said bill respecting the boundary line of the State of Louisiana; and she specifically denies that the deep water channel

through the upper corner of Lake Borgne north of Half Moon Island, eastward through the deep water channel along the Mississippi Sound until it reaches the Cat Island Channel north of Isle a Pitre, and southwest of Cat Island, whence, passing through Chandeleur Sound, northeast of Chandeleur Island, it enters the Gulf of Mexico, and runs south around the delta of the Mississippi River, constitutes the true boundary line. And defendant denies the correctness of Diagram No. 2, filed as a part of the bill, but on the contrary thereof charges and alleges that the effect of the legislation aforesaid was to fix the line between said states southward out of the mouth of Pearl River as set forth in the cross-bill herewith filed.

V.

Answering the fifth paragraph of said bill, defendant denies the correctness of the claim of complainant as stated in said bill, but admits that eastward of the line between said states and that point stated in the cross-bill aforesaid, is the State of Mississippi, and that said State of Mississippi was admitted into the Union of the United States by an Act of Congress approved March 1st, 1817, as stated in the bill creating the western part of the then Mississippi Territory into a state and that said state was and is bounded as stated in said Act of Congress.

VI.

Answering the sixth paragraph of the bill, this defendant denies that the said Act of Congress admitting the State of Mississippi into the Union intended that the southern boundary line of said state should be as stated in said bill of complaint, but defendant charges and alleges the true southern boundary line of said State of Mississippi was and is as stated in the cross-bill herewith filed.

VII.

Answering the seventh paragraph of said bill, defendant admits that the west end of Petit Bois Island, all of

Horn Island, all of Ship Island, all of Cat Island and the small islands north of these were intended to be a part of the State of Mississippi, but defendant denies that they are the only islands that belong to the said state and she denies the correctness of Diagram No. 3, filed as a part of the bill.

VIII.

Answering the eighth paragraph of said bill, defendant denies that it was or is contemplated by the Acts of Congress of 1812, aforesaid, creating the State of Louisiana, that all of the other islands except those named in the last paragraph to be south and west of the boundary line between said states described in the bill, were intended to be embraced in the State of Louisiana; and defendant charges and alleges that said line between said states is as stated in the cross-bill.

IX.

The ninth, tenth, eleventh and twelfth paragraphs of the bill are confessed. The thirteenth paragraph of the bill is admitted to be substantially correct so far as this defendant has information or believes the facts to be with reference to the location of the natural oyster reefs shown by the Fish Hawk's map, marked Diagram No. 4 to the bill of complaint, but defendant denies that said reefs are in the waters of St. Bernard Parish, in the State of Louisiana, but on the contrary thereof, are within the waters of the State of Mississippi as set forth and stated in the cross-bill.

X.

Answering the fourteenth paragraph of the bill of complainant, defendant denies the correctness of diagram No. 5, filed as a part of the bill of complaint, and she denies the correctness of the statement in said bill that the true line between the two states in the waters thereof is shown by

said diagram, but on the contrary thereof she again alleges and charges that the true line fixed by the Acts of Congress admitting the said two states into the Union is as stated in the cross-bill.

XI.

Answering the fifteenth paragraph, defendant admits that the line between said states, in the waters aforesaid, has never been marked in any manner by either state; she admits that the deep water channel out of the mouth of Pearl River through the upper corner of Lake Borgne and on into the Gulf, as stated in the bill, has been marked by buoys by and under the direction of the United States Government for navigation and commercial purposes, but she denies that said marking of said deep water channel was ever intended to fix in any manner whatsoever any part of the boundary line between said states.

XII.

Answering the sixteenth paragraph, defendant denies upon her belief that confusion has resulted in the State of Louisiana, or that a great public demand has arisen in that State, for a marked boundary line between that State and the State of Mississippi in the waters aforesaid, but she respectfully insists that if such condition actually existed in said state, it was first the duty of said state to mark, or undertake to mark, the true line dividing it from the State of Mississippi. And defendant, upon her belief, denies that any fisherman or other citizens of the State of Mississippi have violated the laws of Louisiana by fishing in her waters.

XIII.

Answering the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third paragraphs of the bill, this defendant admits that proceedings were had similar to those copied into said bill, but

defendant denies the allegations of the bill to the effect that there was any crisis or threatening armed conflict between the officers of Louisiana and those of Mississippi, or that there was any controversy between the two states as contemplated by Article 3, Section 2 of the Constitution of the United States, and this defendant now expressly denies, that the matters and things set forth in the said sections of the bill, last above referred to, constitutes a controversy between the two states within the meaning of the Constitution, and defendant denies that there has ever been such controversy between the two states as to give this court jurisdiction of an original bill to settle the same. And defendant expressly denies the charges found in the second clause, on page 9 of said bill, to the effect that the "Marsh Lands" therein referred to are not islands, but alleges that they are smallislands distinctly marked in said waters, and she denies that the people of Mississippi have ever shown a disposition to unlawfully invade the territory of Louisiana, and alleges that they have in fact not done so. Defendant says further that it was never intended by the Governors of said states, respectively, or by the so called Commissioners, appointed by them, as mentioned in the bill of complaint, that said Commissioners should undertake to settle or fix the boundary line between said states in said waters, but only to make a peaceable adjustment of an unimportant dispute by an insignificant number of fish and oyster takers of the two states in the said waters. And defendant denies that the State of Louisiana had exhausted, before the filing of her said bill of complaint, all means whereby the said boundary might be established amicably except for the suggestion made by the so-called Commissioners appointed by the Governor of Mississippi, and she denies that the recommendation of the said Mississippi Commissioners, that a friendly suit in the Supreme Court of the United States be instituted to settle the alleged controversy was sufficient to create a controversy between the two states within the meaning of the constitution of the United States, or to give this court original jurisdiction.

XIV.

Responding to the twenty-fourth paragraph of the bill, the State of Mississippi specificaly denies that the line claimed by the State of Louisiana, to-wit: A line beginning at the most southern junction of the channel of the east branch of the Pearl River with Lake Borgne thence eastward following the deep water channel to the north of Half Moon Island, through the Mississippi Sound Channel, Cat Island Pass, northeast of Isle a Pitre into the Gulf of Mexico, there divides the waters between the two states, or agrees with, or is in accord with the Acts of Congress aforesaid, creating, respectively, the State of Louisiana and the State of Mississippi, as shown by Diagram No. 5 filed with the bill, or in any other manner; and defendant expressly denies the charge contained in the bill, to the effect that any other boundary than the deep water channel as therein described would cause the line in the waters of the two states to conflict and overlap, but on the contrary thereof, defendant charges and alleges, as aforesaid, that the true boundary between the two states in the waters aforesaid, is as stated in the cross-bill herewith filed.

XV.

Answering the twenty-fifth paragraph of the bill, defendant denies the correctness of the construction placed by complainant in her said bill upon the word "westwardly" in describing the southern boundary of the Mississippi line as set forth in said paragraph of said bill of complaint, and she denies that the complainant has, in said paragraph or in said bill, correctly interpreted the intention of Congress as expressed in the Act creating the State of Mississippi with reference to said southern boundary line of said state, and she denies that Congress ever intended, by said Act, that the southern boundary line of the State of Mississippi should be a line drawn from the six league water limit between the States of Alabama and Mississippi in a direct course to the most eastern mouth of Pearl

River, but on the contrary thereof, defendant shows, alleges and charges that it was the purpose and intention of Congress, as clearly shown and expressed in the Act admitting Mississippi into the Union, that her southern boundary line should extend from the six league water limit between said state and Alabama with the meanderings of the shore line to a point six leagues to the southward of the most eastern, or most southern, mouth of Pearl River, and then if such line should, at any point touch the lawful boundary of Louisiana as fixed by the several Acts of Congress, admitting that State into the Union, there would be no lap or conflict, but the Mississippi line would stop at, and follow said Louisiana line. Your defendant alleges and charges the truth to be that a line drawn as contended by the complainant in her said bill from the six league water limit between Alabama and Mississippi, in a direct course to the most eastern mouth of Pearl River, would, in fact, cut off a part of the mainland of Mississippi in Hancock county opposite the Saint Joseph Light House, and defendant reiterates her declaration that the true southern line of said State is as stated in the cross-bill.

XVI.

Defendant admits that the Mississippi line running parallel with the southern shore of Mississippi at a distance of six leagues from the shore line, and following the meandering of the shore at all points between the mouth of Pearl River and the Alabama line would include Grassy, Half Moon, Round, Le Petit Pass Islands and Isle a Pitre, all of which named islands and all other islands within said six league water reach belong, not to the State of Louisiana, but to the State of Mississippi; that the State of Mississippi does not claim and never has claimed any part of the mainland of the State of Louisiana, as shown by Diagram No. 6, filed with the bill, the accuracy and correctness of which diagram she denies, or that she has in any other manner ever made such claim; and she denies

that a line drawn in the waters aforesaid, at three leagues from the high tide marked on the true mainland of the "Coast" of the State of Louisiana, would include the islands last above named; and she alleges and charges that if a line so drawn three leagues from the Louisiana mainland would embrace said islands still they do not belong to the State of Louisiana since such is not the true boundary line between the states of Louisiana and Mississippi, but the said true line is that described in the cross-bill filed herewith.

XVII.

Answering further, and to the twenty-sixth paragraph of complainant's bill, defendant denies that the marsh territory claimed by the State of Mississippi is part of the mainland of the State of Louisiana; she admits that said marsh islands, except the islands named in said paragraph, have been known and called, since time immemorial as the "Louisiana Marshes," even before the State of Louisiana was admitted into the Union, and before the United States acquired the said territory and while the southern portion of Mississippi also was a part of French territory, all known as Louisiana; and she denies that said fact has any significant bearing upon the location of the line between said states or as to the ownership of said states to, or sovereignty over the territory known as the "Louisiana Marshes," no more so than that the parishes of Louisiana north of the River Iberville, known as the "Florida Parishes" would, because of that appellation, entitle the State of Florida to the possession of, and sovereignty over those parishes. And, defendant says if it be true as stated in the twenty-sixth paragraph of the bill that any of the marsh territory rightfully belonging to the State of Mississippi under the Act of Congress admitting her into the Union, have been approved by the General Land Office to the State of Louisiana, such acts by the ministerial offices of the Government had no binding

force or effect as against the State of Mississippi, because such action on the part of said mere ministerial officers by a department of the government, and on the part of the State of Louisiana in accepting said land, would not transfer the title of the State of Mississippi to said lands or her sovereign right to own and exercise jurisdiction over them because it would be a violation of Sec. 3, of Art. IV of the Constitution of the United States, prohibiting the taking of the territory belonging to one State, without the consent of the Legislatures of the states concerned, as well as of the Congress, and defendant alleges and charges that she has exercised jurisdiction and sovereignty over said territory mentioned in said twenty-sixth paragraph of the bill, since she was admitted into the Union.

XVIII.

Responding to the twenty-seventh paragraph of the bill of complaint, defendant denies that any part of the territory claimed by the State of Mississippi is in fact part of the mainland of the State of Louisiana, or that any of said islands referred to in said paragraph claimed by Mississippi are within the nine mile limit of distance from the coast of the State of Louisiana, as contemplated by the Acts of Congress admitting that State into the Union, and she denies that said islands belong to the State of Louisiana by virtue of the second provision of the Act of Congress admitting Louisiana into the Union as stated in said paragraph.

XIX.

Answering the twenty-eighth paragraph of the bill, defendant denies the correctness of complainant's statement that where contiguous states or countries are separated by water, that the channel of the waters dividing said states, constitutes a boundary line, and defendant specifically denies that such rule is applicable to this case; and she denies that there is anything in that portion of her Constitution of 1890, copied into the bill of complaint,

binding her to recognize the channel line insisted upon by the complainant in the instant case.

XX.

Answering further, and to the twenty-ninth paragraph of the bill, defendant admits that none of the marsh territory claimed by the State of Mississippi in this matter have ever been assessed on the tax rolls of said state or that any taxes have ever been paid to her on said territory, but she denies that such failure confers any right to the State of Louisiana to said territory; and, she says, that while it may be true that the lands described in said paragraph in said bill have been attempted to be confirmed to the State of Louisiana by the Land Department of the United States Government as belonging to and forming a part of the State of Louisiana, she denies, nevertheless, that these facts have the effect of divesting the title and sovereignty of the State of Mississippi to and over said territory, or to invest the State of Louisiana therewith, and she denies that the people of said two states, especially the people of the State of Mississippi, have recognized the territory mentioned and described in said paragraphs as belonging to the State of Louisiana. Defendant says that while it may be true that the lands composing Half Moon Island and Isle a Pitre and the other territory mentioned in said paragraph have been dealt with as stated in said paragraph, the defendant, nevertheless, insists that her title to and sovereignty over said islands are protected by Sec. 3 of Art. IV. of the Constitution of the United States.

Defendant denies that all parts of the said territory have been assessed by the State of Louisiana, but says that on the contrary only small and separate parts and straggling portions of same have been so assessed by that state. Defendant says that, except as to a small portion of Isle a Pitre, in the whole expanse of this territory there is not a single human habitation, nor is there any animal life thereon, nor can any such be thereon. That it is a

low-lying archipelago of irregular islands, sometimes entirely covered by the high tide and at all times soft and boggy, and to walk upon them is at almost all times impracticable, and no actual occupancy of any kind has ever been had of the said territory except by the boats of fishermen, and this has heretofore been almost exclusively by citizens of Mississippi, and such occupants have always insisted, without serious question heretofore, that all this territory belonged to the State of Mississippi, and defendant expressly states and charges that the alleged dealings with the said territory by the Land Office of the United States, and by the State of Louisiana, were not only without the consent or acquiescence of the State of Mississippi, but wholly without her knowledge.

XXI.

Answering the thirtieth paragraph of said bill, defendant denies the statement therein that all constituted authorities competent to create, adopt or consider the boundary line between the said states in the waters thereof have declared the said line to be as stated in said paragraph, namely: The deep Water Channel running from the most southern junction of the eastern mouth of Pearl River through Lake Borgne, north of Half Moon Island, through Mississippi Sound, north of Isle a Pitre, southwest of Cat Island, through Cat Island Pass, through Chandeleur Sound, northwest of Chandeleur Islands to the Gulf of Mexico, to be the true water boundary between said states, but she alleges and charges again that the true boundary is as alleged in the cross-bill filed herewith.

XXII.

This defendant now states, alleges and charges that in addition to the foregoing specific denials, she denies generally all of the allegations of the bill of complaint adverse to the matters and claims set up in this answer, and

she calls upon the complainant to sustain the allegations of her bill of complaint, if any she can, by strict proof.

Wherefore this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered according to her best knowledge and belief, humbly prays this Honorable Court that the said complainant's bill may be dismissed, and that the defendant have and recover her reasonable costs.

CROSS-BILL.

For cross-complaint and for affirmative relief your orator, the State of Mississippi shows to the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

I.

That the southern boundary line of the State of Mississippi was certainly and indisputably fixed and designated by Sec. 2, Chapter 23, of the Acts of the Congress of the United States creating said state and approved March 1, 1817, found in Vol. 3, p. 348, of the Statutes at Large as follows:

"*And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to-wit: Beginning on the River Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee River, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River with Lake Borgne, thence up said river to the thirty-first degree of

north latitude, thence west along the said degree of latitude to the Mississippi River, thence up the same to the beginning."

II.

Your orator alleges and charges that the purpose and intention of Congress as manifested by said section of the said Act above quoted was to give the State of Mississippi all lands under the waters south of her well defined shore line to the distance of six leagues from said shore at every point between the Alabama line and the most eastern junction of Pearl River with Lake Borgne, including all islands within said limit, and to give to said State of Mississippi sovereignty thereof, and that by virtue of the said Act all territory within said limits, not being a part of the mainland of the State of Louisiana, became, was and is a part of the territory of the State of Mississippi.

III.

Your orator alleges and charges that while the boundary line from the mouth of Pearl River to the Gulf of Mexico is not attempted to be defined and none was established by the Acts mentioned in the Bill of Complaint creating and enlarging the State of Louisiana, yet said boundary line is accurately designated, and defined for the first time and established as and for the permanent southern boundary line of the State of Mississippi by Sec. 2, Chapter 23, of the Acts of Congress approved March 1, 1817, above referred to and quoted, and your orator charges and alleges that said line by the said Act established is the real true southern boundary line of said state in said waters, and that said boundary line begins at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the Gulf of Mexico, and runs *westwardly with the meanderings of the said shore* six leagues always therefrom until the said line reaches and touches the real mainland of Louisiana, which real mainland and the first touch thereof, your orator charges, in

the line of high tide thereon about two miles due west of the "Indian Mound" and "Lake of the Mound," (See Chart 192), and thence in an almost due northward direction along and on said high tide mark of the Louisiana mainland to Mississippi Sound at or near Nine Mile Bayou (Chart 190) and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern or eastern junction of Pearl River with Lake Borgne (Chart 191), and thence from said point due north to the said Pearl River, including all islands and the land under the waters within the said limits, without regard to the name, character or size of said islands, and your orator here now again alleges and charges that the said line so drawn will include no part of the mainland of Louisiana nor any islands or waters that she is lawfully entitled to. Your orator begs leave to refer to Coast Charts Nos. 19, (June 1900), 190, (June 1900), 192, (Sept. 1899), and 191, (June 1900), prepared and promulgated to the public by the United States Coast and Geodetic Survey, Washington, D. C., Henry S. Prichett, Superintendent, for all descriptions herein referred to, the size and character of which Charts make it impracticable to file them as exhibits to this answer and cross-bill, but your orator will file in due time proper copies thereof, now being made, as diagrams Nos. 1, 2, 3 and 4 and made parts hereof.

IV.

That the Acts of 1812 of the Congress, creating the State of Louisiana and otherwise probably correctly defining her boundary line fails, as is conceded by the said state in her original bill filed in this cause, to describe the water line from the most eastern mouth of Pearl River to the Gulf of Mexico; that in order to supply that part of the line between the two points aforesaid, and to make her water boundary line complete, the said complainant, in her said original bill, proposes without authority in law to

follow the deep water channel from the mouth of Pearl river to the Gulf of Mexico, that is, as far south as that point in the sea where the waters of Chandeleur Sound merge into the waters of the Gulf of Mexico.

V.

That the said Act creating the State of Mississippi was only the organization of a state government in the western part of the Mississippi Territory as such Territory had theretofore existed; that the southern part of the Territory of Mississippi was added thereto by an Act of Congress approved May 14, 1812, passed by the same Congress that created the State of Louisiana and within one month of the date of said Acts creating and admitting the State of Louisiana into the Union. The said Act of Congress making the aforesaid addition to the Mississippi Territory is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all that portion of territory lying east of Pearl River, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi territory; to be governed by the laws now in force therein, or which may hereafter be enacted, and the law and ordinances of the United States, relative thereto, in like manner as if the same had originally formed a part of said territory; and until otherwise provided by law, the inhabitants of the said district hereby annexed to the Mississippi territory, shall be entitled to one representative in the general assemby thereof." U. S. St. at L., Vol. 2, p. 734.

VI.

Your orator humbly shows that the Congress of the UnitedStates,in the enactment of both the statutes relating to the southern part of Mississippi Territory, that is, the Act last above cited, creating that addition to the Missis-

sippi Territory and that creating and admitting into the Union, the State of Mississippi, both of said Acts being subsequent to the passage of the Act creating and admitting into the Union the State of Louisiana, recognized the fact that the boundary line of the State of Louisiana embraced no island in the waters to the east of said state and to the south of the Mississippi mainland, or shore, and within six leagues of the Mississippi shore; that the said Louisiana Acts are not in conflict with the aforesaid Mississippi Acts, the boundaries of Louisiana only embracing such islands, as clearly shown by said Acts creating and admitting her, as were within the Gulf of Mexico and also within three leagues of her Gulf coast, that is to say, within the Gulf of Mexico proper and to the south of said State of Louisiana as contemplated by Congress; that the said line from the mouth of Pearl river to the Gulf of Mexico dividing the territory of Mississippi from the State of Louisiana was never defined until the passage of the Act creating the State of Mississippi, when, *for the first time*, the southern boundary of the Mississippi Territory, the western part of which was, by said Act, made the State of Mississippi, was accurately defined and established as herein stated; that the line above described and defined by the said Mississippi Acts, includes no islands which are within three leagues of the Louisiana mainland and also in the Gulf of Mexico as the limits of the Gulf of Mexico are defined by the said state in her original bill herein.

VII.

Your orator shows that the State of Louisana claims title and sovereignty over some of the islands belonging to the State of Mississippi by virtue of certain alleged action of certain officers of the United States Government and local officers of the State of Louisiana, recited in the original Bill of Complaint herein; your orator charges that said claim to said islands and territory is not well

founded because of the matters herein set forth and because said islands and territory have not been susceptible to actual use and occupation and because said claim is in violation of Sec. 3 Art. IV of the Constitution of the United States prohibiting the transfer of any part of the territory of one state to another adjacent state without the consent of the legislature of the two states, and of the Congress. However, if this Honorable Court should, for any cause or reason, adjudge said islands and territory approved by the aforesaid officials to the State of Louisiana to belong to said state because of such transfers, then your orator prays that the claim and title of Louisiana thereto be restricted to the real lands or islands so lost to the State of Mississippi, and be in no case permitted to affect any lands under the waters, or any of the public oyster reefs thereunder. Your orator alleges and charges that she has exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union; that by her public statutes codified by authority of her legislature in 1857, she declared in terms what had hitherto been in fact the southern or water boundaries of her coast counties in Art. 2, Sec 2, Page 50, Code of 1857; as follows: "* * * and the counties bordering on the Gulf of Mexico—towit: Jackson, Harrison and Hancock—shall, respectively, have and possess jurisdiction and extend to the southern boundary of the State within the space embraced by extending their boundary lines which strike *the Gulf of Mexico*, or the inlets thereto, on a continuous direct course *to the southern boundary of the State, including all islands that may lie within the limits thus defined*".

(Italics ours.)

By which legislation above referred to, and all other legislation by the Congress and the said State of Mississippi, the "Mississippi Sound" was recognized as a body of water, six leagues wide, wholly within the State of Mis-

sissippi, from Lake Borgne to the Alabama line, separate and distinct from "the Gulf of Mexico."

VIII.

That the Congress of the United States, in the early history of the Republic, in dealing with the Gulf Coast or shore and carving states out of the Louisiana purchase, was not perfectly familiar with said coast or shore line, and, as is shown by the several Acts of Congress, creating the Gulf States, respectively, treated the said Gulf coast or shore as a line running generally from east to west, and the said states were intended to be formed and bounded, and, in the contemplation of Congress, were in fact so formed and bounded, as to give to each state jurisdiction over the waters adjacent to its shore or coast for a certain specified distance southward from its mainland line; that it was not intended to give to any state jurisdiction over waters adjacent to and immediately south and in front of any other state or territory. But your orator alleges that the deep water channel line contended for by complainant, as indicated by the maps and diagrams filed with the original bill, would take nearly all of the Hancock county water front, much of the Harrison county water front, and possibly some of the Jackson county water front over all of which Mississippi has exercised jurisdiction and sovereignty since she was admitted into the Union.

IX.

Your orator alleges and charges that all of the Mississippi territory between Pearl River and the Alabama line was organized on December 14, 1812, into two counties known as Hancock and Jackson, and that on February 5, 1841 the county of Harrison was organized between the Bay of St. Louis and the Bay of Biloxi by the segregation of parts of Hancock and Jackson counties. Your orator shows that in an official codification of the statute laws of the State of Mississippi the southern boundaries of said three coast counties are described as fol-

lows: Section 44 of the Revised Code of Mississippi of 1880 as to Hancock county says: " * * * thence along the middle of said Bay of St. Louis, southwardly to its entrance, thence due South to the southern boundary of the State of Mississippi, *in the Gulf of Mexico;* thence westwardly, with said boundary, including all islands within six leagues of the *shores of the Gulf of Mexico and Lake Borgne,* to the most eastern junction of Pearl River, and *Lake Borgne,* and to the east mouth of Pearl River; thence up said river, by the middle thereof, to the point of beginning." (Italics ours.)

Section 45 of the code above mentioned describes the southern boundary of Harrison county to the middle of the Bay of Biloxi, and proceeds as follows: " * * * thence along the middle of the said Bay of Biloxi to its entrance, at the east end of Deer Island; thence due south to the southern boundary of the State of Mississippi; *on the Gulf of Mexico;* thence westwardly, along said boundary to a point from which a line due north strikes the middle of the Bay of St. Louis; thence due north to the entrance of said Bay, including all the islands within six leagues *of the shore of the Gulf of Mexico.*" (Italics ours.)

Section 50 of the code aforesaid, as to the east and southern boundary line of Jackson county reads: " * * * thence east, on the line between townships one and two, south, to the state boundary between Alabama and Mississippi; thence southerly, on said boundary, *to the Gulf of Mexico;* thence westwardly with said boundary to the center of range 9, west; thence north *with section lines* to the beginning." (Italics ours.)

Your orator alleges and shows that in an official codification of her statute laws, taking effect Nov. 1, 1892, and by sections 368, 369 and 374 of said code, the boundaries of said counties are the same as given in the Code of 1880 above mentioned. Your orator now alleges and charges that the lines constituting the southern boundaries of the counties aforesaid, in the waters of the Gulf of Mexico,

are and have been since the formation of Hancock and Jackson Counties on Dec. 14, 1812, the consistently and uninterruptedly recognized, fixed and established southern boundary of the Mississippi Territory and of the State of Mississippi up to the time of the controversy referred to in the original bill in this cause of January, 1901, and out of which this litigation grew. That during all of this time the government of the Mississippi Territory and that of the State of Mississippi has exercised full and complete jurisdiction and sovereignty over the waters in the "Mississippi Sound" as a part of the three counties aforesaid. Your orator shows that the said Mississippi authorities have recognized the "Mississippi Sound" as a part of the territory of Mississippi, and that her township and section lines are as well established in the waters of the "Mississippi Sound" as indicated by the county boundary aforesaid, as upon the lands within said territory. That the fishermen of all kinds have been taking fish and oysters in said "Mississippi Sound" during all of this long period, and have been governed, as well as all others using those waters, by the laws and jurisdictions of the Mississippi Territory and the State of Mississippi and the local authorities in said coast counties. And, your orator alleges and charges the truth to be, that there has never been any adverse claim known to her by the State of Louisiana with reference to the exercise of jurisdiction and sovereignty over those waters until the aforesaid controversy out of which this litigation arose in January, 1901.

Your orator further shows that this said line was also recognized by the Supreme Court, and by the lower courts of Mississippi, and a judicial interpretation given by the said courts to the Act of Congress admitting Mississippi in the recent case of *Leinhard et al, v. Harrison County*, decided by our Supreme Court, January 12, 1903, (not yet reported), in which controversy the issue was as to the center of the said county and measurements from the eighteen mile limit in the water were held to have been correctly made.

IX.

Wherefore, your orator, to the end that she may obtain the relief to which she is justly entitled in the premises, prays the Court and Your Honors to grant to her your writ of subpoena, directed to the said State of Louisiana, and to William W. Heard, Governor of the said State of Louisiana, and to Walter Guion, Attorney General of the State of Louisiana, commanding and requiring them and each of them, on a day certain, to appear herein and answer, not under oath, an answer under oath being hereby expressly waived, to the several allegations in this cross-bill contained.

And upon final hearing may it please your Honors to adjudge and decree that the boundary line dividing the States of Mississippi and Louisiana is the line which. beginning, at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the Gulf of Mexico, runs westwardly with the meanderings of the shore six leagues always therefrom until said line reaches and touches the real mainland of Louisiana about two miles due west of the Indian Mound" and "Lake of the Mound," and thence in an almost due northward direction along and on the high tide mark of the said Louisiana mainland to Mississippi Sound at or near Nine Mile Bayou, and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern, or eastern junction of Pearl River with Lake Borgne, and thence from said point due north to the said Pearl River; that the said line be located and permanently bouyed at the joint expense of the two states; that the full title and sovereignty over all the islands and the land under the waters north and east of the said line so established be decreed and adjudged to be in the State of Mississippi, and that the State of Louisiana and her citizens be perpetually enjoined from disputing such title and sovereignty of the State of Mississippi therein, and your orator humbly prays for such other and further relief, preliminary and final, as to the Court may seem meet and proper, and which the facts of the case may require, and for costs of suit.

MONROE MCCLURG,
DODDS & GRIFFITH,
HANNIS TAYLOR,
Of Counsel.

WILLIAM WILLIAMS,
Attorney General of Mississippi.

THE STATE OF MISSISSIPPI,
HINDS COUNTY.

Personally came and appeared before me the undersigned authority in and for said county and state, Andrew H. Longino, who on oath states that he is the Governor of the State of Mississippi; that he has read the foregoing answer and cross-bill and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

ANDREW H. LONGINO.

Sworn to and subscribed before me this 7th day of October, A. D. 1903.

GEO. C. MEYERS,
CLERK OF SUPREME COURT

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 12, Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

BRIEF FOR MISSISSIPPI ON HER DEMURRER TO THE BILL OF COMPLAINT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

We first humbly invite this honorable court to decide whether the governor and attorney general of a State may, of their motion, determine that there is within the contemplation of the Constitution of the United States a controversy between two States and whether they may independently of legislative action bring a suit to settle the same.

Article III, section 2, Constitution of the United States, reads as follows:

> "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which

> shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to *controversies between two or more States;* between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects."

That this honorable court has jurisdiction over controversies between two States is not questioned. Our first contention is that it must clearly appear from the complaint that there is a "controversy" within the meaning of the Constitution or this court will not take jurisdiction of the cause. The procedure, so far as a defendant State is concerned, has been long since settled. Service of process upon her governor and attorney general requires her to appear.

New Jersey v. New York, 5 Peters, 284.

The primary inquiry being as to whether there is a "controversy," we respectfully insist that the governor and attorney general alone have no authority to determine that there is one. A controversy between two coterminous States as to the location of the boundary line dividing them is, at first, a political question for determination by the political department of the State government, the legislature. It is in no sense an executive act within the scope of the governor's duties or powers. It is not within the duty or power of the attorney general, who belongs to the judicial department.

If we should be mistaken in our contention that the governor and attorney general, of their own motion, have not the power to bring a suit of this character, then we most respectfully insist that in this cause they have misjudged the facts; that the matters contained in the bill of complaint are not sufficient in law to warrant the bringing of the complaint. As we understand it, they rely upon act No.

65 of the legislature of 1884, of Louisiana, for their authority. It is as follows:

No. 65.

AN ACT

To empower the attorney general to institute and prosecute suits without security or advance costs and without bond.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the attorney general be, and he is hereby authorized and empowered, to institute and prosecute any and all suits he may deem necessary for the protection of the interests and rights of the State; and no court of this State, nor officer thereof, shall demand of the State, or the attorney general, any security for costs, or any advance costs; but all costs for which the State may become liable shall be paid by the attorney general out of the proper appropriation therefor. That in any and all cases where bond is required by law in legal proceedings, the State and the attorney general shall be dispensed from giving such bond.

We respectfully submit that this act is local to Louisiana and defensive of the interests of that State, and does not carry the power to provoke litigation with a coterminous State respecting boundary lines.

Mississippi Law.

Turning now to Mississippi, we find first that there is no statute or other law by which she has consented to be sued in a case like this. Section 4248 of the Code of 1890, the only one bearing upon this question, is as follows:

4248. When the State May Be Sued.—Any person having a claim against the State of Mississippi, after demand made of the auditor of public accounts therefor, and his refusal to issue a warrant on the

treasurer in payment of such claim, may, where it is not otherwise provided, bring suit therefor against the State, in the court having jurisdiction of the subject-matter which holds its sessions at the seat of government; and if there be no such court at the seat of government, such suit may be instituted in such court in the county in which the seat of government may be.

See also—

Dinkins v. The State, 77 Miss., 874.
Hall v. The State, 79 Miss., 38.
Beens v. Arkansas, 61 U. S. [20 How.], 521.

Of course we will not be understood as contending that a State may defeat an action like this by refusing to be sued. We believe that in those cases where she may be sued in this honorable court, by reason of being a member of the Union, she has, nevertheless, the right to humbly demand a strict observance of the laws of the land and the usual practice of this court. The evils that would follow a rule permitting the governor and attorney general of a State to bring suits of this character at their option are obvious.

The importance of the foregoing contention is emphasized by the fact that, so far as Mississippi is concerned, she could neither bring nor defend such a suit without an appropriation by the legislature providing for the expenses of the suit.

In the State *ex rel.* J. W. Barron, district attorney, *v.* W. Q. Cole, auditor Mississippi, December 1, 1902, the supreme court of Mississippi, passing directly upon the question of paying money out of the State treasury without legislative appropriation, said:

"Now, as already said, no salary or other obligation of the State, can be lawfully paid, except out of an appropriation therefor by the legislature definitely fixing the maximum sum which may be drawn on that account. And, although, there are in the code several provisions directing the auditor to issue warrants, he cannot lawfully issue any except to pay out of an appropriation therefor fixing definitely

the maximum sum which may be drawn, and also not continuing beyond six months after the meeting of the legislature at its next session. It seems to us perfectly clear that the auditor rightly refused to issue his warrant in this case, and the judgment of the circuit court is, therefore, affirmed."

The constitution of Mississippi, 1890, reads as follows:

> "SEC. 4. The legislature shall have power to consent to the acquisition of additional territory by the State, and to make the same a part thereof; *and the legislature may settle disputed boundaries between this State and its coterminous States whenever such disputes arise.*"

The authority of a State to settle her boundary disputes independently of constitutional grant will not now be questioned. But the above section gives strength to our contention for what we conceive to be the correct principle. Most of the reported cases show that these suits have been brought and defended by express legislative action.

> *Rhode Island v. Massachusetts*, 12 Peters, 657; same case, 4 How., U. S., 592.
>
> *Missouri v. Iowa*, 160 U. S., 688; same case, 7 How., U. S., 661.

In those cases in which it does not appear by the official report that the complaint is as to State-line controversies [not controversies respecting executive or judicial matters] we presume that the legislature authorized the suit. The importance of such authority cannot be better illustrated than in the instant case, to wit:

Your honors will notice that the governors of these two States undertook, without express authority of any law, to appoint a joint commission to mark the boundary. Had that commission adopted a line, without legislative con-

firmation, it would have been child's play. After that commission failed to agree and before the institution of this suit, as this honorable court will take judicial knowledge, the legislature of both States have held regular constitutional sessions without noticing this alleged controversy. In his message to the legislature of Mississippi, January, 1902, House Journal 1902, p. 140, Governor Longino said:

"Mississippi Boundary Commission."

> "On February 9, 1901, I appointed the following-named gentlemen as commissioners to confer with a like commission appointed by the governor of Louisiana to consider the water boundary line between the two States, and arrange for the easy location and identification of the same by a proper system of buoys, to wit:
>
> Hon. J. I. Ford, Scranton, Miss.
> Hon. E. J. Bowers, Bay St. Louis, Miss.
> A. Keller, Bay St. Louis, Miss.
> Hon. W. A. White, Biloxi, Miss.
> Hon. H. T. Howard, Biloxi, Miss.
>
> "This commission met at Biloxi and elected H. T. Howard chairman and J. I. Ford, secretary. Their report, which is transmitted to you, will acquaint you with the whole matter, and from which you will find that they suggest a friendly suit in the Supreme Court of the United States as the best method to fix a true boundary between the two States.
>
> "I submit the matter for such legislation, as in your judgment, is best."

The legislature took no notice of it. So far as we are informed, the governor of Louisiana did not call the attention of the legislature of that State to the subject at all. Certainly there was no State-line legislation by that State.

As to Construction of Acts of Congress Creating the Two States.

We respectfully submit that when Louisiana was admitted there was no such thing as the "Mississippi sound," probably no "Lake Borgne."

Reading the statutes mentioned in the bill, it seems impossible to escape the conclusion that "the Gulf of Mexico" was at that time all of the great waters out of the "rigolets" and the mouth of Pearl river. From Pearl river westward to the Sabine meant for Louisiana to mark from the high tide on her mainland "coast" three leagues seaward, and in so measuring to follow the meanderings of her high-tide mainland mark. If, perchance, the Mississippi six-league line measured from her well-defined "shore" touched Louisiana's three-league line, it necessarily halted and followed it until the waters widened, as above stated. Hence, we insist there is no possibility of a legal conflict in the two lines. Of course, your honors will quickly observe and appreciate the fact that there is no reference to any "deep-water channel" out of Lake Borgne, through the Mississippi sound into what we now call the Gulf proper. It is confidently believed that this court will not undertake to so amend the acts of Congress mentioned. Congress itself could not do this without the consent of the States. It is not pretended in the bill that the deep-water channel is now where it was nearly a century ago. It will not do to subject State-line boundaries to the shifting changes of the Gulf or of the Sound. The maps show that what is known as "Lake Borgne" ends where what is now known as the "Mississippi sound" begins. In 1812 it was all the "Gulf of Mexico."

So it is, it cannot be said with legal accuracy that the effect of the several statutes mentioned in the bill was to follow the "deep-water channel" into the Gulf of Mexico. We submit that it is not the law to follow deep-water channels generally, and in no case in salt waters or waters similar to the Gulf of Mexico.

D. & D. Bridge Co. v. County of Dubuque, 55 Iowa, 558.

And we submit it is perfectly clear that Congress had no intention of giving to either State a single island by name. The purpose was to embrace all islands with the league limits.

This honorable court is familiar with the rules of construction of statutes. The intent of Congress at the time of passing these laws of 1812 and 1817 is readily gathered from the context of the acts, and will be accordingly interpreted, construed, and declared by this court.

In article II of the constitution of Florida, 1868, part 1, Poor's Charters and Constitutions, p. 348, all of these expressions are used: "*to the* Atlantic ocean;" "*five leagues from the mainland;*" "*five leagues from the shore.*" So in the charter of Georgia of 1732, *ib.*, p. 373, "*to the south seas*" and "*from the sea.*" So in the Gulf boundaries of Louisiana and Mississippi the first touch of the great waters was "*the Gulf of Mexico.*" And thus it is in the large water boundaries of all of the old charters, treaties, and constitutions.

The original line must stand, notwithstanding changes in channels or water-courses.

Indiana v. Kentucky, 136 U. S., 479.
Missouri v. Kentucky, 11 Wall., 395.
Cassill v. Kentucky, 40 Ark., 506.
Missouri v. Iowa, 7 How., 660.
U. S. v. Texas, 162 U. S., p. 1.

"Where land is bounded by a common-law navigable stream, *i. e.*, in which the tide ebbs and flows, the boundary is the high-water mark on the shores."

I. A. and E. E. of Law, 1st ed., p. 504.
Canal Courses v. People, 5 Wendall, 423.
Wheeler v. Spinola, 54 N. Y., 377.
East Haven v. Hemingway, 7 Conn., 186.
Niles v. Patch, 13 Gray, 254.
Stewart v. Fitch, 30 N. J. S., 20.
Middleton v. Pritchard, 4 Ill., 520.

"The same rule applies to land bounded by the sea, or by arms of the sea. The boundary is the high-water mark."

Stores v. Freeman, 6 Mass., 435; S. C., 4 Am. Dec., 155.
Commonwealth v. Rothbury, 9 Gray [Mass.], 492.
Pollard v. Hogan, 3 How. [U. S.], 230.
Goodlittle v. Kibbs, 9 How., 477.
Hodges v. Bookeby, 48 Me., 71.
Cortelyon v. Van Brandt, 2 Johns., 362.
Ledyard v. Tenrick, 36 Brab., 125.
Mecklers v. Chapman, 40 Conn., 382.
Dona v. Jackson Sh. Wharf, 31 Cal., 170.

Where a patent confirming a Mexican grant describes the land as follows: "Beginning on the seashore at station number 13 of the Ballona ranches," the plot of the survey annexed to the patent representing this common corner of the two ranches as commencing on the seashore, it is to be construed that the land is, at that point, bounded by the sea in ordinary high-water mark.

Jones v. Martin et al., 35 F., 348.
See also *Obleniss v. Worth*, 67 F., 303.

In *Coleman v. San. Water Co.*, 75 F., 520, it is held that a Mexican land grant of land bordering "to the west on the sea, included only the lands above high-water mark, and did not cover the tide lands." A boundary on the "sea" means the same thing as on the "seashore."

37 Cal., 432, and *U. S. v. Pacheco*, 2 Wall., 587, followed.

There is no occasion here to invoke rules of construction—the simple interpretation of the acts defining the boundaries of the two States is sufficient. Counsel concedes that these acts are definite and certain. (See sec. 14 of original bill.)

It is beyond question the duty of courts in construing

statutes to give effect to the intent of the law-making power in every legitimate way; but first of all, in the words and language employed, and if the words are free from ambiguity and doubt, and express plainly, clearly, and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation.

Sutherland on Statutory Construction, sec. 237 (1891).
Stimpson, Am. Stat. Law, sec. 1020 *et seq.*

When the meaning of a statute is clear, and its provisions are susceptible of but one interpretation, that sense must be accepted as the law.

Sutherland on Statutory Construction, sec. 238.

The complainant here cannot protest against the rule which requires that the words of the statute be followed if clear and unambiguous, for that is a rule enacted into statute in that State.

"Spirit and text.—When a law is clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."

Article 13, *La. Code*, 1900.

"Laws *in pari materia*, or upon the same subject-matter must be construed with reference to each other; what is clear in one statute may be called in aid to explain what is doubtful in another."

Article 17, *La. Code*, 1900.

These are but general rules of construction made statute law of the State of Louisiana. Adopting these rules of construction and applying them, together with section of complainant's bill, to the acts of Congress, in this case, complainant finds itself in the following category:

1. This court is asked to adjudge what is a boundary line where, complainant concedes, it is already plainly defined by the acts of Congress.

2. This court is asked to give a construction to the act defining the boundaries of the State of Mississippi that will give it a meaning not apparent on its face, and at the same time complainant is contending that the act is plain and definite.

3. This court is shown an act defining the southern boundary line of the State of Mississippi, and which seems to give the said State sixteen hundred and twenty square miles, more or less, of territory south of the mainland, and, while conceding the act plain and definite, asks this court to give it a construction which would cut this water territory half in two.

4. While admitting there is no occasion for construction, at the same time, in the same pleading, complainant is attempting to construe the act defining the Louisiana boundary by showing what the legislature meant to be the line from Lake Borgne to the Gulf when this line is clearly not defined by the said act.

5. While admitting that the line has been clearly defined by the acts of Congress, complainant does not show that she has attempted to mark nor that she has been prevented from marking nor that Mississippi has kept her from marking it.

6. That complainant comes into this court asking that something be done for her which, as far as pleadings show, she can do for herself, and which it is her privilege and duty to do, and which it appears she knows how to do.

7. And complainant is contending that the act creating the State of Mississippi does not mean what it appears to

mean, and at the same time protesting that its meaning is clear as written.

8. That the act defining the boundary of Louisiana is also plain as written, and at the same time the act is attempted to be construed.

Complainant is met in this argument by her own statutory law. She admits the Mississippi act is plain. In her attempt to draw a line from Lake Borgne to the Gulf to complete the boundary of Louisiana, she concedes that the Louisiana act is not plain. If it were plain, there would be no necessity for the labored *deep-channel* argument. Hence, that which is plain must prevail. "What is clear in one statute may be called in aid to explain what is doubtful in another."

If the Mississippi act is plain, it renders the Louisiana act plain, where, before, it was doubtful. If the Louisiana line from the mouth of Pearl river to the Gulf of Mexico was never plainly defined before, it was clearly defined when the Mississippi act was passed. What is plainly expressed in the Mississippi act must stand; it cannot yield to simple construction.

We submit with great confidence that the third assignment for cause of demurrer must settle this cause. There is no uncertainty of description in the statute admitting Mississippi as to her Gulf boundary. It is unquestionably six leagues from every part of her shore between Pearl river and the Alabama line. "Westwardly" from the Alabama line was not, as is contended by counsel, intended to draw a line from a point six leagues from the shore at the Alabama line directly to the mouth of Pearl river; but it was intended to draw that line from that point with meanderings of the shore line. In case of bays or other arms of the Gulf the line measures six leagues from the well-known junction between bay and Gulf. Your honors

will not fail to notice that the act admitting Mississippi, page 4 of the bill, does not say *from a point six leagues from the shore to the mouth of Pearl river.* The language is "thence south to the Gulf of Mexico; thence westwardly, including all islands within six leagues of the shore, to the most southern junction of Pearl river with Lake Borgne." It cannot be seriously questioned, we submit, that Mississippi's water territory is six leagues from the shore at the mouth of Pearl river, the same as at the Alabama line, unless it should in such reach touch the previously established line of Louisiana, in which instance her line would give way to and follow that of Louisiana until the waters gave her the full six leagues without interfering with Louisiana's three.

Counsel's argument is suicidal. The act of April 7, 1812, enlarging the territory of Louisiana, conditioned upon the express consent of that State, reads from "Lakes Maurepas and Ponchartrain *to the eastern mouth of Pearl river.*" No provision for the three leagues on her coasts between the lake outlets and the Pearl "to the Gulf of Mexico" is cut out by the amended boundary. Nor does the bill of complaint allege that Louisiana even consented to accept this important change in her limits as that act provided.

This suit cannot be maintained for the benefit of individuals. Nor has Louisiana, as a State, any property rights involved.

The State is not sovereign as to its citizens or as to another State and is under no obligation to collect the debts of its citizens or to otherwise redress their private wrongs. The State cannot loan its name to its citizens or sue in their behalf.

New Hampshire v. Louisiana, 108 U. S., 91.
Louisiana v. Texas, 176 U. S., p. 1.

Notwithstanding the comprehensive words of the Constitution, the mere fact that a State is the plaintiff is not a conclusive test that the controversy is one in which this court is authorized to grant relief against another State or her citizens.

Wisconsin v. Pelican Ins. Co., 127 U. S., 287.

No State can be sued either in its own courts or those of any other State or nation without its consent, and States can only be sued in *proper* cases in this court by reason of their agreement in the Constitution that the judicial power of the United States shall extend to all cases arising under the Constitution and laws.

United States v. Texas, 143 U. S., 646.

The controversies existing at the time of the adoption of the Constitution were the cause and origin of extending the judicial power of the United States to controversies between the States, and the only purpose of such constitutional provision was to provide a tribunal for settlement of such controversies as to boundaries and other like controversies.

United States v. Texas, 143 U. S., 639.

It was not the intention of the States in adopting the Constitution to give their consent to be sued whenever a dispute arises between citizens of different States in regard to commerce or any property right affecting such citizens.

Hans v. Louisiana, 134 U. S., 15.

So, we most respectfully insist that the section of the Federal Constitution above quoted in its reference to controversies between States means States in their sovereign and corporate capacity, and not in a sense that administrative officers are the embodiment of such powers, in questions purely of boundary lines.

Finally.

We most respectfully submit unto your honors that Louisiana should cleanse her hands and purge her conscience by attempting, at least, to mark her lines before provoking Mississippi into this controversy. The dignity of the State, we think, demands that she should not complain of her sister until she frees herself of all blame, especially since it is made clear by her bill of complaint that she is, because of her "marshes" and long sweeps at shallow waters, uncertain as to the exact location of her "coast." The "Fish Hawk's" map is convincing on this proposition. Before invoking equity at the hands of this august tribunal, she ought to be free from fault. She alleges at paragraph 15, page 6, of her complaint, that the line has never been marked. She notes the marks of the channel by the United States Coast Survey; but that was unquestionably for purposes of navigation. Therefore we earnestly contend that when the bill shows upon its face a well-defined "shore" for Mississippi and a clear statement of her six-league water limit, with an uncertain "coast" for herself, her complaint ought not to be tolerated until she has undertaken to remove the cause by marking her line.

That Mississippi *permits* the dredging of oysters in that State, while Louisiana *forbids*, as stated in the tenth and eleventh paragraphs of the bill, is, in point of law, no more cause for complaint of the location of the line than if one State *permitted* the carrying of concealed weapons and the other *forbade* it. The offender in the one instance the same as in the other is amenable alone to the State whose laws he has violated. Each State is sovereign as to its own affairs, especially so as to matters of police regulation. The plea of "not guilty" extends to the venue of the crime as well as to the *corpus delicti*. Not a single prosecution or any other judicial determination of a conflict is alleged; not a

warrant issued; not an arrest made; not one act by either State in its sovereign or corporate capacity charged. It simply *is, as positively shown upon the face of the bill, fishermen of Mississippi fishing or dredging in what they believe to be Mississippi waters;* that is the gist of this case, and that is the whole case. Where, when, how, what the cause of an armed conflict between the county peace officers of the two States? The answer is as silent as an echoless tomb.

The governors of these States never intended more than *to quiet the fishermen.* It is next to absurd to suppose that by the proceedings copied into the bill, pages 7 to 14, the chief executive of either State undertook to establish and fix the boundary in the waters of the Gulf. Wholly without authority, save as simple peace measures, the so-called commissions were appointed, and wholly without legal effect was the recommendation for "*a friendly suit in the Supreme Court of the United States.*" The legislature, as before stated, declined to notice the recommendation. Quickly enough did Louisiana act upon the suggestion. But it remains, nevertheless, that this honorable court will not suffer the trouble shifted to its determination by consent of the parties. Ever watchful of questions of jurisdiction, it will not, as we think, suffer such imposition.

There can be no reasonable contention as to the plain and unambigious language of the acts of Congress admitting these two States and defining their water limits. The lines stand where those acts fixed them notwithstanding local constitutions and statutes. There has never been any purpose by Mississippi to cede to Louisiana any of her possessions, nor had the General Land Office Commissioner or any other administrative officers of the Federal Government any power to take away from her and give to Louisiana any of her territory. We do not understand that any claim has been or will be made by Mississippi to any of the mainland of Louisiana, but whatever *islands* that are within six leagues of her shore at any point belong to her and she should have

them. It is immaterial to the present contention that landowners on Half Moon island, or Isle a' Pitre, deraign their titles through the State of Louisiana.

In Virginia *v.* West Virginia, 11 Wall., 39, the counties of Jefferson and Berkeley, formerly belonging to the old State, were adjudged to the new one. (See, also, Tyler's Law of Boundaries (1876), pages 242–'3.)

Summary.

That there is no controversy shown within the contemplation of the Constitution.

That the law itself fixes the lines.

That Louisiana has no standing in this court until she undertakes to mark her own boundary.

That the governor cannot appoint commissions to fix boundary lines.

That a scramble over oyster beds by the fishermen of two States does not constitute a controversy between those States.

That the governor and attorney general of a State have no authority in law to lend the name of the State to a few fishermen to settle their quarrels.

That the property rights of Louisiana, as a corporate State, are not involved.

That Mississippi, in her corporate capacity, has done nothing to provoke this suit.

That Mississippi, in her corporate capacity, has not denied the pretended claims of Louisiana. She pursues the even tenor of her way.

That Louisiana seeks to change the law fixing her water boundary.

That the bill of complaint shows no conflict in fact between the authorities of the two States.

That the bill makes no case.

In conclusion, we beg to submit that the liberal practice in this court respecting suits of this character has not been

overlooked in filing the demurrer or in this argument. But it has appeared to us to be so plain that Mississippi has been unjustly drawn into this contention that *the law* ought to relieve her rather than put her to the great trouble and expense of answering the complaint of Louisiana and filing her cross-bill and proving its allegations. It occurs to us that there is not a well-pleaded fact in the bill that the demurrer does not meet, and we humbly pray the court to relieve the State of further trouble with this premature and wholly insufficient bill.

But after all if Mississippi should be mistaken in her position, then we ask the court to allow her to set up the same matters in her answer and cross-bill and a chance to prove them. This we understand to be the rule announced in Colorado *v.* Kansas, 185 U. S., 126.

We humbly submit that the demurrer ought to be sustained.

WILLIAM WILLIAMS,
Attorney General of Mississippi.

MONROE MCCLURG,
Of Counsel.

N. B.—This cause was, by the court, set for March 2d. Counsel have filed an agreement to submit it on briefs with consent that the court allow counsel for Louisiana 20 days thereafter in which to file their brief.

WILLIAM WILLIAMS,
Attorney General.

MONROE MCCLURG,
Of Counsel.